

1 JAMES P. HURLEY
2 Attorney for Debtors
3 411 North 2nd Street
4 Yakima WA 98901
5 (509) 248-4282

6 UNITED STATES BANKRUPTCY COURT
7 EASTERN DISTRICT OF WASHINGTON

8 In Re:)
9) NO. 06-01690
10 CISNEROS, Oralia and Miguel)
11 Debtors.) FINDINGS OF FACT AND
12) CONCLUSIONS OF LAW
13)

14 THIS MATTER having come on regularly for hearing before the HONORABLE JOHN A.
15 ROSSMEISSEL, United States Bankruptcy Judge for the Eastern District of Washington, by telephone
16 conference on November 15, 2007, the Debtors appearing by and through their attorney of record
17 JAMES P. HURLEY of Hurley & Lara, the Chapter 12 Trustee FORD ELSAESSER appearing in person
18 and by written report, and the Internal Revenue Service of the United States of America appearing
19 through Assistant U.S. Attorney ROLF H. TANGVALD, AmericanWest Bank appearing through
20 TIMOTHY KLASHKE of Kuffel, Hultgren, Klashke & Shea, LLP, Farm Service Agency, United States
21 Department of Agriculture appearing through Assistant U.S. Attorney FRANK WILSON, and Wells
22 Fargo Bank appearing through JENNIFER ASPAAS of Routh, Crabtree and Olsen. The Court having
23 considered the testimony of the Debtor, the exhibits and evidence offered in support of the Order
24 Confirming the Debtor's Chapter 12 Plan and the stipulations of the parties evidenced by their
25 signatures approving these Findings, the Court now makes the following:
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30 FINDINGS OF FACT AND
CONCLUSIONS OF LAW
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HURLEY & LARA
Attorneys at Law
411 North 2nd Street
Yakima, WA 98901
(509)248-4282

1 FINDINGS OF FACT

2 1. The Plan complies with the provisions of Chapter 12 and with other applicable provisions
3 of Title 11, U.S. Code;

4 2. Any fee, charge or amount required under Chapter 12 of Title 28, U.S. Code, or by the
5 Plan, to be paid before confirmation, has been paid;

6 3. The Plan has been proposed in good faith and not by any means forbidden by law;

7 4. The value, as of the effective date of the Plan, of the property to be distributed under the
8 Plan on account of each allowed unsecured claim is not less than the amount that would be paid on
9 such claim if the estate of the Debtors were liquidated under Chapter 7, Title 11, U.S. Code, on such
10 date;

11 5. The holder of each allowed secured claim has accepted the Plan, subject to the
12 modifications set forth as follows:

13 (1) The Class II claim of AmericanWest Bank is amended to read as follows:

14 Class II – AmericanWest Bank.

15 1. Description of Claim: AmericanWest Bank holds a first mortgage security
16 interest on 31.6 acres of real property used in Debtor's farming operation identified by Yakima
17 County Parcel No. 231025-43005. AmericanWest Bank also holds first-position security
18 interests in a 1994 Ford pickup truck used in Debtor's farming operation and in two (2) orchard
19 wind-machines located on the above-mentioned real property. AmericanWest Bank also holds
20 a second-position security interest in an irrigation system and related infrastructure/equipment
21 located on the above-mentioned real property. All debt owing by Debtors to AmericanWest
22 Bank is cross-collateralized, and AmericanWest Bank is a fully secured creditor that has filed an
23 allowed secured claim in the itemized and aggregated total amount of \$219,096.15 as of Plan
24 confirmation.

25 2. Treatment of Claim:

26 (a) The allowed secured claim of AmericanWest Bank relating to the wind-machine
27 loan debt and pickup truck loan debt in the aggregated amount of \$18,440.90 shall be
28

1 reamortized and fully payable in three (3) annual installments, including interest at the fixed rate
2 of eight and one-half percent (8.5%) per annum commencing on November 15, 2007. The
3 annual payment is \$7,161.63, with the first payment due on November 15, 2008, the second
4 payment due on November 15, 2009, and the third and final payment of all remaining claim
5 principal and all accrued unpaid interest thereon due on November 15, 2010.

6 (b) The allowed secured claim of AmericanWest Bank relating to the real estate
7 mortgage loan debt in the amount of \$200,655.25 shall be reamortized over a period of twenty
8 (20) years and paid in annual installments, including interest during the period from November
9 15, 2007, to November 15, 2010, at the rate of six and one-half percent (6.5%) per annum. The
10 annual payment is \$18,195.37, with the first payment due on November 15, 2008, and the
11 subsequent payments due on the same day of each following year thereafter. On November
12 15, 2010, the interest rate on then-remaining claim principal shall be adjusted to reflect an
13 interest rate based on the West Edition Wall Street Journal Prime Rate plus a margin of 2.000
14 percentage points. On November 15, 2015, the interest rate on remaining claim principal shall
15 be adjusted again pursuant to the above-stated formula and then adjusted again in such
16 manner every five (5) years thereafter until all remaining claim principal and all accrued unpaid
17 interest thereon is paid in full no later than November 15 2027.

18 3. Retention of Liens: AmericanWest Bank shall retain its lien and lien priority
19 position on the above-described real property and on all of the above-described personal
20 property collateral during the period that any portion of AmericanWest Bank's claim remains
21 unpaid. Except as modified by this Plan, the Debtor agrees that the terms and conditions of the
22 loan documents between Debtor and AmericanWest Bank shall remain in effect and all defaults
23 are deemed cured as of the date of Plan confirmation.

24 (2) The treatment of the Class III claim of Farm Service Agency of the United States
25 Department of Agriculture is amended to read as follows:

26 2. Treatment of Claim: The allowed secured claim of FSA shall be reamortized
27 over a period of fifteen (15) years and paid in annual installments, including interest at the rate
28 of six per cent (6%) per annum, with the first annual payment due one year from the date of
29 confirmation. Subsequent payments shall be due on the same date each year. The annual
30 payment is approximately \$10,400.00. All defaults are deemed cured as of the date of
confirmation. All other terms related to the Class III claim as set forth in the Plan remain
unchanged.

(3) The Class IV claim of Wells Fargo Bank is amended as follows:

1. Description of Claim: Wells Fargo holds a first deed of trust on Debtor's home,
located at 121 Carousel Lane, Sunnyside, Washington, and assigned Yakima County
Assessor's Parcel No. 231025-34407. The creditor has filed a claim in the amount of

1 \$94,114.11. Debtor has made post-petition payments on this obligation. The Debtor is
2 delinquent in some post-petition payments. Debtor estimates the delinquency to be \$14,400.00
3 or less.

4 2. Treatment of Claim: The allowed secured claim of Wells Fargo Bank shall be
5 reamortized during the term of the Plan and the interest rate fixed at 9.6 percent per annum and
6 to be paid in equal monthly installments, including interest at the modified rate of 9.6 percent per
7 annum in the amount of \$789.00, plus reserves of \$116.00, the reserves are subject to
8 adjustment pursuant to the terms of the original loan documents, with the first payment due on
9 the date of distribution, but not later than January 1, 2008, and with subsequent monthly
10 payments due on the same date of each month thereafter until the 37th month following the date
11 of confirmation, at which time the interest rate and the monthly payment amount shall be
12 adjusted in accordance with the terms of the loan documents executed between the parties.

13 The arrearage of approximately \$14,400.00 shall bear interest at the rate of 9.6%
14 per annum and shall be amortized over the life of the Plan and paid in equal annual installments
15 with the first such payment being due one year from the date of confirmation and the second
16 and third payments due on the same date of each Plan year thereafter. The creditor shall file an
17 amended claim within 90 days of the date of confirmation setting forth their calculation of the
18 Debtors' arrearages.

19 The remaining terms of the treatment of the Class IV claim remain unchanged.

20 (4) The allowed secured claim of Corvair Corner shall be paid by the surrender of
21 the collateral securing said claim. This claim shall be treated as being paid in full.

22 6. Debtors' proposed Operating Budget demonstrates the feasibility of the Plan.

23 The Court having entered its Findings of Fact, now enters the following:

24 CONCLUSIONS OF LAW

25 1. The Plan complies with the provisions of Chapter 12 and with other applicable provision
26 of Title 11, U.S. Code; and

27 2. The Court should confirm Debtors' Chapter 12 Plan as modified in the foregoing
28 Findings of Fact regarding the stipulations and clarifications of the parties.

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HURLEY & LARA
Attorneys at Law
411 North 2nd Street
Yakima, WA 98901
(509)248-4282

1 Presented by:

2
3 s/ James P. Hurley

4 JAMES P. HURLEY WSBA #6615
5 Attorney for Debtors

6 Agreed to and Approved for Entry:

7
8 approved telephonically

9 FORD ELSAESSER
10 Chapter 12 Trustee

11 Agreed to and Approved for Entry:

12
13 ROLF H. TANGVALD

14 Attorney for Internal Revenue Service
15 of the United States of America

16 Agreed to and Approved for Entry:

17
18 approved telephonically

19 TIMOTHY KLASHKE of Kuffel, Hultgrenn,
20 Klashke & Shea, LLP,
21 Attorneys for AmericanWest Bank

22 Agreed to and Approved for Entry:

23 FRANK WILSON

24 Assistant U.S. Attorney
25 Attorney for Farm Service Agency, United States
26 Department of Agriculture

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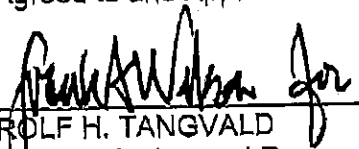
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4 Attorney for Debtors
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6 Agreed to and Approved for Entry:

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8 FORD ELSAESSER
9 Chapter 12 Trustee

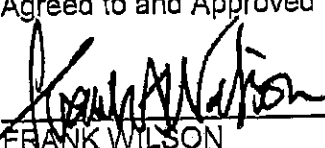
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4 Routh, Crabtree and Olsen
5 Attorneys for Wells Fargo Bank
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John A. Rossmeissl
Bankruptcy Judge

HURLEY & LARA
Attorneys at Law
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Yakima, WA 98901
(509)248-4282